IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 728 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LILADHAR BHIMJI PITRODA

Versus

RUKSHAMANIBEN BHIMJI PITRODA

Appearance:

1. Civil Revision Application No. 728 of 2001

MR MG NAGARKAR for Petitioner No. 1

MR NV ANJARIA for Respondent No. 1-2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 09/07/2001

ORAL JUDGEMENT

Heard Mr. N.G.Nagarkar learned advocate for the petitioner.

2. Rule. Mr. N.V.Anjaria learned advocate who has

appeared by way of caveat has waived the service of rule on behalf of respondents.

3. The petitioner has challenged the order dated 16.6.2000 passed by learned Assistant Judge, Kuttch at Bhuj in the proceedings of Misc. Civil Appeal No. 26 of 2001. That vide impugned order, the lower Appellate Court has partly allowed the appeal and had modified the order of Trial Court dated 2.6.2001 passed below Exh.5 in the proceedings of Regular Civil Suit No. 81 of 2001 and has set aside the order to the extent that defendants were restrained from repairing or raising any construction in the suit premises without prior permission of the plaintiff. However, it is ordered that defendants were restrained from alienating or transferring the suit property.

4. The petitioner and respondent nos.1 and 2 are the members of the joint family and have interest into immovable property which is ancestral and situated at village Madhapar, District -Kuttch. The description of the property is given in the plaint as well as in the application Exh.5. The present petitioner as plaintiff of the suit sustained damage and alleged that under the guise of repairing, the present respondents, who are the the defendants of the suit, are trying to demolish the property and causing radical changes in the suit premises and also attempting to sell, transfer and alienate the suit property and thereby, petitioner was constrained to file said suit and prayed for temporary injunction as claimed. That the Trial Court vide order dated 2.6.2001 restrained the present respondents from transferring, alienating or selling the suit property and also from causing radical changes by demolishing the part and raising new construction. That the said order was challenged by present respondents vide Misc. Civil Appeal No. 26 of 2001. That the Appellate Court vide impugned order dated 16.6.2001 disposed of the said appeal as stated hereinabove and hence, the petition.

5. During the submission, it is clarified that the present respondents do not intend to demolish the suit property. However, they only intend to make the premises habitat as it is dwelling house of the family and raise necessary construction to make the property safe for habitation.

In view of the said fact, respondents as co-owners of the said property having a right to repair the same which sustain damage on account of earthquake, the order passed by the Appellate Court cannot be said to

illegal, unjust, unreasonable or is passed in illegal exercise of jurisdiction. Under the circumstances, petition fails and stands disposed of as rejected. Rule is discharged with no order as to costs.

(A.K.Trivedi,J.)

(vipul)